

CHRONICLE OF AN INJUSTICE

BRIEF SUMMARY OF THE CASE OF THE CUBAN FIVE

Leonard Weinglass

After decades of enduring attacks within its own borders (acts of arson, sabotage, assassinations and the use of biological weapons) perpetrated by anti-Cuban terrorist groups based in southern Florida that enjoy the support and consent of the US government, and after the United States repeatedly refused to implement measures to prevent such attacks, a group of unarmed men traveled from Cuba to the United States to monitor the activities of mercenary groups responsible for those attacks and organizations that support them and to warn Cuba of their aggressive intentions.

In September 1998, five of these men, who would later be known as the Cuban Five, were arrested in South Florida by FBI agents and kept in isolation cells for 17 months before their case was even brought before a court. Initially, they were accused of the vague crime of conspiracy which, according to US law, constitutes a commitment to carry out acts of espionage (the US government never accused them of actual espionage, nor did it affirm that real acts of espionage had been carried out, as no classified military document had been confiscated from the men). In addition the men faced minor charges associated with the use of false names and for failing to inform federal authorities that they were working on US soil on behalf of Cuba.

Seven months later, a new charge was brought against the accused: again, that of conspiracy, but this time to commit murder. This charge was brought specifically against one of the Five, Gerardo Hernández, the result of an intense public campaign which sought to avenge the downing, by Cuba's Air Force, of two light airplanes piloted by members of an anti-Castro group and the death of its four crew members, an event that had taken place two years before, when those airplanes were within Cuban airspace. The planes belonged to an organization which, in the 20 months preceding the incident in which they were downed, had penetrated Cuban airspace 25 times, something which had been denounced repeatedly by the Cuban government. The downing of the planes took place after Cuban authorities had officially warned the United States that it would defend its airspace.

In spite of the vigorous objections raised by the Five's defense, the case was tried in Miami, Florida, a community that is home to more than half a million Cuban exiles with a long history of hostility toward the Cuban government, an environment that a US federal court of appeals would later describe as a "perfect storm" of prejudices, which, in this case, prevented the holding of a fair trial. Each and every one of the 12 members of the jury selected to try the case expressed negative opinions regarding the Cuban government and was a hostile jury member. The three potential jury members who expressed a neutral stance toward Cuba were disqualified by the government

The trial, which lasted over six months, became the longest trial that the United States had known until then. More than 119 volumes of testimony and over 20,000 pages of documents were compiled, including the testimonies of three retired Army generals, a retired admiral, a former Clinton advisor on Cuban affairs (all called by the defense) and high Cuban officials. Near the trial's conclusion, when the case was about to be presented to the jury for its consideration, the US government presented an extraordinary appeal before a higher court, seeking its intervention, recognizing that it had failed to prove the main charge of conspiracy to commit murder and alleging that it was facing an "insurmountable obstacle" in connection with winning the case. After that appeal was turned down, the jury nonetheless found the Five guilty of all charges, under intense pressure brought to bear on them by the local media, whose cameras followed jury members even while driving, so that their license plate numbers were made public, and by anti-Castro activists, who did not cease their protests before the court.

Found guilty, the Five were given unprecedented long sentences and imprisoned in five completely separate maximum security prisons. Gerardo Hernández was given two life sentences; Antonio Guerrero and Ramón Labañino a life sentence each, Fernando González 19 years and René González 15 years. The three men sentenced to life imprisonment became the first three people ever to be sentenced to life imprisonment for espionage in the United States in a case where no secret document was ever handled.

Gerardo Hernández Nordelo	2 life sentences plus 15 years
Ramón Labañino Salazar	1 life sentence plus 18 years
Antonio Guerrero Rodríguez	1 life sentence plus 10 years
Fernando González Llort	19 years
René González Sehwerert	15 years

The initial appeal process lasted 27 months and concluded with a decision by a three-judge panel of the court of appeals that revoked all of the convictions on the grounds that the five accused had not received a fair trial in Miami. In an unexpected move, the government asked the twelve judges of the Court of Appeals of the Eleventh Circuit to review the panel's decision through a so-called en banc procedure. Exactly one year later, in spite of the strong disagreement voiced by two of the three judges who made up the panel, the Court plenum revoked, by majority, the 93-page decision of the three judges and refuted the claim that a climate of violence and intimidation prevailed in Miami. In the quarter century before this decision, that court had never ruled in favor of a person accused of a federal crime.

All the while, on May 27, 2005, the UN Work Group on Arbitrary Detentions, after reviewing the arguments advanced by the family of the Cuban Five and

the US government, concluded that their imprisonment was arbitrary and urged the US government to take the measures needed to rectify the situation.

The Work Group stated that, based on the facts and the circumstances in which the trial was held, the nature of the charges and the severity of the convictions, the imprisonment of the Five violates Article 14 of the International Convention on Civil and Political Liberties, to which the United States is a signatory.

On August 20, 2007, an oral hearing called by a three-judge panel took place at the Atlanta Court of Appeals for the 11th Circuit. As in the two previous hearings held in March 2004 and February 2006, the parties- US government and the defense- put forth their arguments and replied to the questions put to them by the judges.

This hearing was yet another step in the long appeal process for the Cuban Five undertaken the moment they were sentenced in 2001. On this occasion, the US government once again proved unable to refute the arguments of the defense or to substantiate its accusations.

The defense, however, offered irrefutable proof of the improper conduct shown by the government throughout the legal proceedings brought against the Five, a flagrant violation which affects the entire case, related to prosecution's invention of crimes which it could not prove during the trial, promotion of a hostile atmosphere and manipulation of the evidence and the jury.

The lack of evidence needed to substantiate the two main charges- conspiracy to commit espionage and conspiracy to commit first-degree murder- and the imposition of completely irrational and unjustifiable life sentences, has been another key argument advanced by the defense in its efforts to reveal the arbitrary nature of the process. The government itself recognized during the trial that it could not produce a single secret document to prove the charge of espionage and that it had met an "insurmountable obstacle" in its efforts to prove the charge of conspiracy to commit murder.

Throughout the rigged process, the government admitted that its true aim was to protect the anti-Cuban terrorist groups that operate, with complete impunity, from Miami and to punish those who fight against them.

On June 4, 2008, the 3-judge panel expressed its opinion, ratifying the guilty verdicts of the Five; ratifying the sentences of Gerardo Hernández and René González; annulling the sentences of Antonio Guerrero, Fernando González and Ramón Labañino and referring the cases once again to the Miami District Court so they could be re-sentenced at a hearing to be called for this purpose.

On September 12 these five men will have served their tenth year in prison for crimes they did not commit, but for having tried to protect Cuba from terrorist actions. Cuba, like the United States and any other country in the world, has a legitimate right to defend itself from this scourge, which has already claimed many lives.

The case against Gerardo Hernández, Ramón Labañino, Antonio Guerrero, Fernando González and René González is still in the appeal process at the Atlanta Court of Appeals for the 11th Circuit.

HUMAN RIGHTS VIOLATIONS

Between the time of their arrest and trial, the Five were detained, with no right to bail, for 33 months. In addition to this, they were kept in isolation cells for 17 months. They were denied all contact with their relatives and small children and even each other.

In August 2001, before they were convicted at their hearings, they were once again sent to the "hole" for 48 days.

Just as the defense was preparing to submit their documents to the court and the appeal process for the cases was about to commence in March 2003, the Five were once again summarily sent to isolation cells, "on orders from Washington", as the administrators of the local penitentiaries declared, perplexed at that order, as the Five had maintained exemplary conduct during their imprisonment.

At the time the US Department of Justice decided to keep the Five in solitary confinement for "national security" interests. US authorities applied the so-called Special Administrative Measures (SAMs) by virtue of federal regulations passed in 1996. These measures are applicable in cases where there is reason to suspect that communication between federal prisoners can put the country's national security at risk or lead to acts of violence or terrorism.

The Five were once again sent to the "hole", thus prevented from any contact with the world. All communication with their lawyers was denied them. They were not allowed to receive visitors, not even from the consulate. They were not allowed to receive any correspondence or make telephone calls, not even with their families. This measure was adopted by the US government at a crucial stage of the legal process, when contact between lawyer and client is crucial and the defense was preparing its declarations for the appeal.

The "Special Administrative Measures" were amended by virtue of the 2001 Patriot Act, which extended the period of time these measures can be applied from 120 days to a year, and modified the norms governing the approval of such extensions. As a result of this amendment, the "Special Administrative Measures" could be applied to the Five again at any time in the future.

The Five have been in prison for more than 9 years. During this time, Adriana, Gerardo Hernández' wife, has never been granted a visa that will allow her to visit her husband. Olga, René González' wife, has also been denied the possibility of visiting her husband. With respect to the other relatives, the US government has continued unnecessary delays in the granting of entry permits. The average number of visas granted for every member of the family (including parents, wives and children) is solely one visa for every family member a year.

As a result, in most cases, relatives have been able to visit the Five on average only once every year, when, in conformity with the regulations governing visits at the different prisons, more frequent visits could have been coordinated, had the visas been granted for this purpose.

Amnesty International has condemned these acts as violations of international law. In a letter addressed to the US Department of State, Amnesty International declared: "Such denial of family visits for convicted prisoners would represent a substantial hardship in any case. This is of even more urgent concern in the present cases given the serious questions which have been raised about the fairness of the convictions", adding: "this measure is unnecessarily punitive and contrary both to standards for the humane treatment of prisoners and to states' obligation to protect family life."

THE MOST RECENT DECISION IN ATLANTA

On June 4, 2008, the three-judge panel of the Atlanta Court of Appeals for the 11th Circuit responsible for reviewing the case of the Five, made up of Judges Stanley Birch, Phyllis Kravitch and William Pryor, expressed its opinion, after that Court plenum August 9, 2006 annulment of its previous decision of August 9, 2005 that overturned the convictions of the Five and called for a new trial, having found that they had not received a fair trial. On that occasion, the plenum instructed the judges to review the other arguments behind the appeal.

In its new opinion, the panel ratified the guilty verdicts of the Five, ratified the sentences imposed on Gerardo Hernández and René González, annulled the sentences imposed on Antonio Guerrero, Fernando González and Ramón Labañino and referred these last three cases to the Miami District Court, so that they would be re-tried at a hearing to be held for that purpose.

Unanimously, the panel defeated each and every one of the arguments advanced in the appeal by the defense, alleging that they were "devoid of merit", save those related to the sentences imposed on Ramón, Antonio and Fernando. Only in connection with the charge of conspiracy to commit murder brought against Gerardo, a charge which the prosecution itself recognized before the court of appeals during the trial that it could not prove, the decision was 2 to 1, with a 16-page decision presented by Judge Kravitch, who affirmed that the government had not presented any evidence to prove that Gerardo was guilty of such a crime.

The 99-page decision was drawn up by Judge Pryor, member appointed in 2007, who, with a politicized language completely out of place in a legal document, explicitly favored the government's position and even changed a number of facts invoked by that same panel in its previous decision in favor of the Five, regarding the issue of venue, and manipulated other facts in the case files.

Pryor, whose appointment as federal judge proved highly controversial (owing to his far-right positions) and which was denounced by important US

newspapers as well as criticized within the Senate, was proposed by Bush in April 2003 and disallowed on that occasion by the Senate. Subsequently, in June 2005, he managed to secure his appointment, although 45 senators voted against, through a negotiated arrangement with the presumed current Republican presidential candidate John McCain.

In an interview for Cuban television aired the day after the three-judge panel made its decision public, attorney for the defense Leonard Weinglass affirmed:

*“When the Five were arrested in 1998, the Pentagon and the Department of Justice issued a statement saying that the United States' national security had not been damaged. Now, after they've been in prison for 10 years, we have an assertion from a high-level court that **there was no espionage and that no top secret information was obtained or transmitted**. That's what the Court found. Yet, they are remanded to be re-sentenced and we're not sure what the new sentence will be.*

Gerardo's case (2 life sentences plus 15 years) was the simplest, according to all the lawyers, and could have been withdrawn. However, although his case is easy from the legal point of view, given the lack of evidence for the charge of conspiracy to commit murder he is accused of; it is the most difficult one from the political point of view, due to the political climate that exists in Miami. The [Florida] Court did not have the courage to set aside such a sentence even when the government itself acknowledged in writing at the trial that it could not prove it.

When one reads the Appellate opinion, in particular the first 40 pages, it is very clear to attorneys there is ideological prejudice in the emitted decision.

This 99-page ruling finds that Judge Joan Lenard made mistakes when she sentenced Fernando. She made mistakes when she sentenced Antonio; she made mistakes when she sentenced Ramón. She made mistakes in the instructions she gave the jury about Gerardo and -- according to two of the three [Atlanta] judges -- made a mistake when she denied a change of venue.

Despite these six or seven serious errors, the [Atlanta] court remands the case to Judge Lenard

Lamentably, this is one of those situations where the government of the United States is utilizing its justice system to achieve a foreign-policy objective, and can be compared to the opposite tack in the case of Posada Carriles. Historically when this happens and the existence of political prejudice is revealed, the American people feel greatly ashamed at the failure of their system of justice and the courts of justice."

DIFFICULTIES SURROUNDING FAMILY VISITS TO THE CUBAN FIVE IMPRISONED IN THE UNITED STATES

During these years of unjust imprisonment, the delay in the granting of visas to the relatives of the Cuban Five, imprisoned in the United States since September 12, 1998, has, in most cases, prevented these relatives from visiting the Five more than once a year on average, despite the regulations of the different prisons allowing monthly visits.

Since 2006, when a new procedure for the request of temporary entry visas was introduced, this situation has worsened, and the time relatives have had to wait to obtain a visa and, thus, the time the Five have been denied visits from these relatives, has increased significantly (up to 19 months, to date).

According to these regulations, relatives in the United States must request the visit at the US Interests Section in Cuba via phone. This has forced the relatives of the Five to resort to an exceptional mechanism which has made the securing of visas an even more complicated process than before 2006.

What follow are some examples of the above-mentioned difficulties:

Gerardo Hernández Nordelo (2 life sentences plus 15 years): Since the time of his arrest on September 12, 1998, he has not received a single visit from his wife, Adriana Pérez.

- From 2002 to date, the US government has denied his wife, Adriana Pérez, the authorization to enter US territory to visit the prison where her husband is held. On 8 different occasions, Adriana Pérez has requested a visa to visit him and, on these 8 occasions the US Government has denied it.

- In 2002 she was granted a visa and, upon arriving at the airport in Houston, Texas on July 25, 2002, authorities arbitrarily detained her for 11 hours, denied her recourse to Cuban consular officers and revoked her visa, preventing her from entering the United States.

All of this has been psychologically torturous for Gerardo Hernández who, sentenced to life imprisonment, will therefore never see his wife again.

- His sister, Isabel Hernández Nordelo, submitted her visa request on November 2, 2006 and had to wait until November 21, 2007, to receive the visa, that is, **she had to wait 12 months to receive a visa.**

René González Sehwerert (15 years): August 16, 2000 was the last time he was visited by his wife Olga Salanueva.

- From 2002 to date, the US government has denied his wife, Olga Salanueva, authorization to enter the United States to visit the prison where her husband is held. She has requested the visa to visit him on 8 occasions and has been denied it by the US government on all 8 occasions. In 2002, she was granted a visa. This visa was revoked the following week.

- His mother, Irma Sehweret, had to wait **17 months** (from September 12, 2006 until February 5, 2008) **to obtain her last visa.**

- His father, Cándido René González, presented his visa request on April 16, 2007, and it was granted him on February 5, 2008, **10 months after he requested it.**

Ramón Labañino Salazar (life imprisonment plus 18 years): For exactly **two years**, since June 2006 to date, he has not received any visits from his relatives owing to the delay in the granting of visas.

- His wife, Elizabeth Palmeiro, and his two daughters, Laura Labañino and Lisbeth Labañino, have been waiting for **19 months, since September 2006**, when they presented their visa requests at the US Interests Sections in Havana (USINT). They have yet to obtain them.

- Ramon's older daughter, Ailí Labañino, presented her visa request on November 2, 2006. The visa was granted **12 months later**, on November 6, 2007, but, upon arriving at the prison, its complete shut down was decreed as a result of disturbances in which Ramón Labañino did not participate. As a result of this, she was unable to make a single visit in the course of her 29-day stay.

Fernando González Llort (19 years): He has been unable to see his mother, Magali Llort, and his wife, Rosa Aurora Freijanes, for a year, owing to the delay in the granting of visas.

- From the time of his transfer to Oxford prison in Wisconsin, until 2007, his mother and wife, the only relatives who have ever visited him, were not recognized as such by prison authorities and were not included in the list of visitors. Thus, not only did they face the usual difficulties to obtain the visas, their visits to the prisons required special authorization from the establishments.

- His mother, Magali Llort, **has been waiting for 15 months** (since March 19, 2007, when she presented the visa request) to obtain a visa.

- His wife, Rosa Aurora Freijanes, presented her visa request on December 15, 2006 and had to wait **11 months**, until November 2007, when she finally received it.

Antonio Guerrero Rodríguez (life imprisonment plus 10 years): For two periods of over 17 months, he has not received visits from his relatives because of the delay in the granting of visas to his mother, Mirtha Rodríguez, and his son, Antonio Guerrero.

- In December 2003, after obtaining the pertinent visas and traveling to the United States, his mother, Mirtha Rodríguez, and son, Antonio Guerrero, were unable to visit him as planned because Antonio had been unexpectedly transferred to a different prison. It was not until April 2005 that they received a new visa to visit him.

- His mother, Mirtha Rodriguez, presented her visa request on April 16, 2007 and obtained the visa on February 5, 2008, **10 months after having requested it.**

- His son, Antonio Guerrero Cabrera, presented his visa request on March 8, 2007, and obtained the visa on February 5, 2008, **11 months after having requested it.**

Open Letter to the Attorney General of the United States of America

Mr. Alberto Gonzales Attorney General of the United States of America

According to the information supplied by the international press, on August 9, 2005, the Court of Appeals of the Eleventh Circuit Court of Atlanta declared null and void the decision passed in Miami which had condemned Gerardo Hernández Nordelo, René González Sehwerert, Ramón Labañino Salazar, Antonio Guerrero Rodriguez and Fernando González Llort for infiltrating the extremist Cuban American groups in the south of Florida in order to obtain information about terrorist activities directed against Cuba. Their prison sentences have already been declared illegal by the Working Group on Arbitrary Detentions of the Human Rights Commission of the United Nations.

For the past seven years, these five young men have been held in maximum security prisons; they have been held incommunicado in isolated cells for long periods of time and two of them have been denied the right to receive family visits.

At this present time, considering the nullification of the sentence, nothing justifies their incarceration. This arbitrary situation which is extremely painful for them and their families cannot be allowed to continue. We, who have signed below, are demanding their immediate liberation.

NOBEL PRIZE LAUREATES Wole Soyinka, Nadine Gordimer, Desmond Tutu, Rigoberta Menchú, Adolfo Pérez Esquivel, José Saramago, Harold Pinter, Zhores Alfiorov, y Günter Grass and over **6,000 intellectuals and artists from around the world**, including Noam Chomsky, Oscar Niemeyer, Mario Benedetti, Harry Belafonte, Pablo González Casanova, Ernesto Cardenal, Thiago de Mello, Danny Glover, Walter Salles, Eduardo Galeano, Alice Walker, Manu Chao, Atilio Borón, Francois Houtart, Ignacio Ramonet, Luis Sepúlveda, Tariq Ali, Ramsey Clark, Gianni Miná, Frei Betto, Miguel Bonasso, Howard Zinn, Jorge Sanjinés, Rusell Banks y Alfonso Sastre, have signed this letter.

- More than 1,000 parliaments around the world have declared their support of the Five through motions and letters addressed to the US government which demand their release.
- The parliaments and parliamentary commissions of Great Britain, Ireland, Russia, Mexico, Belgium, Germany, Italy, Bolivia, Venezuela, Panama, Peru, Brazil, Paraguay and Mali, among others, have pronounced themselves in favor of the Five.
- The 113th Assembly of the Inter-parliamentary Union, the Latin American Parliament, the Central American Parliament, ParlaSur, the Andean Parliament and the Indigenous Parliament have passed resolutions in this connection.
- The Women's Forum of the Joint ACP-EU Parliamentary Assembly and the Network of Parliamentary Women of the Parliamentary Conference of the Americas have denounced the situation of two wives of the Five, to whom the United States has denied visas.

- In February 2007, 187 members of the European Parliament signed a written declaration which asks the US government to grant the wives of two of the Five, Olga Salanueva and Adriana Pérez, and other relatives, the needed visas as expeditiously as legally possible, and asks the European Commission Council to call on the US government to adopt the measures needed to rectify the situation.



Working Group on Arbitrary Detentions of the UN Human Rights Commission May 27, 2005

“The deprivation of liberty of Mr. Antonio Guerrero Rodriguez, Mr. Fernando González Llorca, Mr Gerardo Hernández Nordelo, Mr. Ramón Labañino Salazar and Mr. René González

Sehweret is arbitrary, being in contravention of article 14 of the International Covenant on Civil and Political Rights”

Important associations of lawyers, ombudsmen and human rights activists have voiced their support of the cause of the Five:

- International Union of Jurists
- Ibero-American Union of Jurists
- National Association of Criminal Defense Lawyers
- National Association of Federal Defenders
- Florida Association of Criminal Defense Lawyers
- Order of Defense Lawyers of Brazil
- Puerto Rico Lawyers’ College
- International Association of Democratic Lawyers
- American Association of Jurists
- National Lawyers Guild
- Ibero-American Federation of the Ombudsman
- Amnesty International

**GERARDO HERNÁNDEZ NORDELO
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USP VICTORVILLE
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13777 Air Expressway Road
Adelanto, CA 92394**

Born in the City of Havana on June 4, 1965. Graduated in 1989 on International Political Relations in the Higher Institute of International Relations of the Ministry of Foreign Affairs.

From 1989 to 1990 he participated as internationalist combatant in the war of liberation of Angola and against apartheid.

Gerardo is a caricaturist and he has published his drawings in the Cuban press media and displayed them in exhibitions in various galleries. A book containing his works was published recently. His poems have been published in electronic media.

Gerardo was unfairly sentenced to **two life terms plus 15 years**. The government of the United States prohibits his wife to visit him.

Charges: General Conspiracy, Conspiracy to commit espionage, Conspiracy to commit murder, False Identity and Conspiracy to act as a non- registered foreign agent

**RAMON LABAÑINO SALAZAR (LUIS
MEDINA)
No. 58734-004
USP MCCREARY
P. O. Box 3000
Pine Knot, KY 42635**

Born in the City of Havana on June 9, 1963. Graduated with a summa cum laude on Economy in the University of Havana in 1986. Ramón has three daughters of 18, 12 and 8 years of age.

He was unfairly sentenced to **life imprisonment plus 18 years**.

Charges: General Conspiracy, Conspiracy to commit espionage, False Identity and Conspiracy to act as a non- registered foreign agent

**ANTONIO GUERRERO RODRÍGUEZ
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South Florence, CO 81226**

Born in the city of Miami on October 16, 1958. Graduated as airfield construction engineer from the Technical University of Kiev, in the former Soviet Union. The expansion of the Santiago de Cuba International Airport was the most important works in which he was involved.

Antonio is a poet and painter. He has published three books of poems, the first "From my Altitude", and two more recently "Confidential Poems" and "Décimas for Antonio Maceo".

Several of his poems have been put to music. He has two sons of 20 and 13 years of age.

He was unfairly sentenced to **life imprisonment plus 10 years**.

Charges: General Conspiracy, Conspiracy to commit espionage and Conspiracy to act as a non- registered foreign agent.

RENÉ GONZÁLEZ SEHWERERT
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Marianna, FL 32447-7007

Born in Chicago, US, on August 13, 1956. He is a pilot and flight instructor. René has two daughters of 21 and 7 years of age.

From 1977 to 1979 he participated as internationalist combatant in the war of liberation of Angola and against apartheid.

René was unfairly sentenced to **15 years of imprisonment**. The government of the United States prohibits his wife and his little daughter to visit him.

Charges: General Conspiracy and Conspiracy to act as a non-registered foreign agent.

FERNANDO GONZÁLEZ LLORT (RUBEN CAMPA)
No. 58733-004
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P.O. BOX 33
TERRE HAUTE, IN 47808

Born in the City of Havana on August 18, 1963. Graduated with a summa cum laude on International Political Relations in the Higher Institute of International Relations of the Ministry of Foreign Affairs in 1987.

From 1987 to 1989 he participated as internationalist combatant in the war of liberation of Angola and against apartheid.

Fernando was unfairly sentenced to **19 years of imprisonment.**

Charges: General Conspiracy, False Identity and Conspiracy to act as a non- registered foreign agent.